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13 Attorneys for Plaintiff

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,)

18 Plaintiff,)

19 v.)

20 JEFFREY S. RICHTER,)

21 Defendant.)
22

No. CR-03-0026-MJJ

PLEA AGREEMENT

23 I, JEFFREY S. RICHTER, and the United States Department of Justice, by the United States
24 Attorney's Office for the Northern District of California and the Enron Task Force (hereafter "the
25 Government"), enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(B)
26 of the Federal Rules of Criminal Procedure:

27 //

28 //

FILED

FEB 04 2003

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 The Defendant's Promises

2 1. I agree to waive indictment and plead guilty to both counts of the above-captioned
3 information, charging me in count one with conspiracy to commit wire fraud in violation of 18
4 U.S.C. § 371, and in count two with making a false statement to a government agency in
5 violation of 18 U.S.C. § 1001. As to count one, I agree that the elements of the offense and the
6 maximum penalties are as follows: (1) there was an agreement between two or more persons to
7 commit the crime of wire fraud, in violation of 18 U.S.C. § 1343; (2) I became a member of the
8 conspiracy knowing of at least one of its objects and intending to help accomplish it; and (3) one
9 of the members of the conspiracy performed at least one overt act for the purpose of carrying out
10 the conspiracy.

- | | | | |
|----|----|---------------------------------|-------------------------------|
| 11 | a. | Maximum prison sentence | 5 years |
| 12 | b. | Maximum fine | \$250,000 |
| 13 | c. | Maximum supervised release term | 3 years |
| 14 | d. | Mandatory special assessment | \$100 |
| 15 | e. | Restitution | Up to the amount of the loss. |

16 As to count two, I agree that the elements of the offense and the maximum penalties are as
17 follows: (1) I made a false statement in a matter within the jurisdiction of the Federal Bureau of
18 Investigation (the FBI); (2) I acted willfully, that is deliberately and with knowledge that my
19 statement was untrue; and (3) my statement was material to the FBI's activities and decisions.

- | | | | |
|----|----|---------------------------------|-----------|
| 20 | a. | Maximum prison sentence | 5 years |
| 21 | b. | Maximum fine | \$250,000 |
| 22 | c. | Maximum supervised release term | 3 years |
| 23 | d. | Mandatory special assessment | \$100 |

24 2. I agree that I am guilty of the two offenses to which I will plead guilty, and I agree
25 that the following facts are true:

26 Background

27 Between 1997 and 2002, I was employed by Enron Corporation (Enron). Beginning in
28 January 2000, I became the manager of the Short Term California trading desk at Enron's West

1 Power Trading Division (West Power) in Portland, Oregon. My desk, among others, was
2 responsible for buying and selling electricity to California wholesale customers through a number
3 of energy and energy services markets run by the California Power Exchange (the PX) and the
4 California Independent System Operator (the ISO). With limited exceptions, these entities were
5 responsible for scheduling, managing, and arranging the payment for, all of the electricity
6 supplied to the State of California.

7 The markets run by the PX and ISO included the day-ahead, the day-of, the hour-ahead,
8 and the real-time energy markets, into which energy marketers like Enron bid and scheduled
9 fixed amounts of electricity for delivery to retail and wholesale customers (known as load).
10 Enron also sold stand-by electricity generation capacity, known as ancillary services, to the ISO,
11 which was charged with ensuring that a fixed percentage of such capacity was available to
12 prevent a collapse of the system in the event of an emergency.

13 The ISO also managed transmission capacity and congestion into, within, and out of the
14 State. When congestion occurred, the ISO calculated a fee to be charged to suppliers who
15 ultimately transmitted electricity through a congested transmission path. The ISO paid that fee to
16 entities who acted to relieve congestion and to the owners of Firm Transmission Rights (FTRs)
17 on the congested path. In 2000, Enron owned FTRs on the primary transmission path between
18 the Northern and Southern zones within California.

19 Scheme To Defraud

20 In 2000, I and other individuals at Enron agreed to devise and implement fraudulent
21 schemes through these markets. We designed the schemes to obtain increased revenue for Enron
22 from wholesale electricity customers and other market participants in the State of California.
23 The schemes required us to submit false information to the ISO in the electricity and ancillary
24 services markets described above. Among other things, we knowingly and intentionally filed
25 energy schedules and bids that misrepresented the amount and geographic location of the load we
26 intended to serve. We did so for the purpose of increasing the appearance of congestion on
27 transmission lines, increasing the market price for congestion fees for transmission between
28 zones, earning congestion payments that otherwise would not have been available, and increasing

1 the value of our FTRs (which only generated revenue when congestion existed).

2 We also submitted bids to supply ancillary services that we did not have, or did not intend
3 to supply, in the ISO's day-ahead ancillary services market. The bids we submitted contained
4 fabricated information regarding the source and nature of the ancillary services we proposed to
5 supply to the ISO. Once the bids were accepted, we would cancel our obligation to supply the
6 ancillary services by purchasing them in the ISO's hour-ahead ancillary services market. Enron
7 would then profit by capturing the difference in price between the two markets.

8 As a result of these false schedules and bids, we were able to manipulate prices in certain
9 markets, arbitrage price differences between the markets, and obtain congestion fees in excess of
10 what we would have received with accurate schedules and bids. We received the revenues from
11 the above-described schemes through the ISO, which on a monthly basis billed all customers for
12 wholesale electricity in California, and paid all suppliers, like Enron. I acknowledge that the ISO
13 made these payments to Enron by interstate wire transmission through the Bank of America in
14 San Francisco, California. For the purpose of carrying out the conspiracy, I and others involved
15 in the schemes caused the ISO to transmit these payments to Enron monthly during the course of
16 the conspiracy in 2000.

17 False Statement

18 On September 26, 2002, I was interviewed in San Francisco, California, with my attorney
19 present, by the Special Agents from the FBI's San Francisco Field Office, and a Special Assistant
20 United States Attorney for the Northern District of California. Prior to the interview, I was
21 informed of my obligation to tell the truth and that if I did not tell the truth, that I could be
22 criminally prosecuted. During the interview, I was questioned extensively about my conduct as
23 a trader of electricity for Enron, and my involvement in the trading strategies listed above, among
24 other things. In response, I falsely stated that I never intentionally deceived anyone when
25 submitting power schedules. When I made this statement, I knew that it was not true. I
26 acknowledge that the statement was made in a matter within the jurisdiction of the FBI and that
27 they were material to the FBI's activities and decisions.

28 3. I agree to give up all rights that I would have if I chose to proceed to trial,

1 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
2 examine Government witnesses; to remain silent or testify; to move to suppress evidence or raise
3 any other Fourth or Fifth Amendment claims; to any further discovery from the Government; and
4 to pursue any affirmative defenses and present evidence.

5 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
6 the Court. I also agree to waive any right I may have to appeal my sentence.

7 I waive any right I may have to assert the attorney-client privilege by declining to answer
8 any questions asked of me at any trial or hearing by a pro se defendant or counsel for any other
9 defendant in any case or matter in which I am cooperating with the Government pursuant to this
10 agreement. See United States v. Henke, 222 F.3d 633 (9th Cir. 2000) (counsel for any defendant
11 who has joined a joint defense agreement may owe duty of loyalty to all defendants participating
12 in the joint defense agreement). Furthermore, I waive any right I may have to assert my right to
13 conflict-free representation by any attorney or pro se defendant where a conflict arises from that
14 attorney's or defendant's participation in a joint defense agreement in which I also was a party.

15 5. I agree not to file any collateral attack on my conviction or sentence, including a
16 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
17 that my constitutional right to the effective assistance of counsel was violated.

18 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
19 entered.

20 7. I agree that the court may order and I will pay restitution in an amount to be
21 determined based upon the amount of loss caused by my conduct, and I agree that the amount of
22 restitution will not be limited to the loss attributable to the count to which I am pleading guilty,
23 pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good faith effort to pay any fine,
24 forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of
25 the Court, the Government, or the U.S. Probation Office, provide accurate and complete financial
26 information, submit sworn statements and give depositions under oath concerning my assets and
27 my ability to pay, surrender assets I obtained as a result of my crimes, and release any of my
28 funds and my property under my control in order to pay any fine, forfeiture, or restitution. I agree

1 to pay the special assessment at the time of sentencing. I agree as part of my sentencing that the
2 Court may enter an order prohibiting me from trading on, or trading subject to the rules of, any
3 "registered entity," as that term is defined by the Commodities Exchange Act, 7 U.S.C. § 1a(29),
4 during my term of supervised release.

5 8. I agree to cooperate with the U.S. Attorney's Office before and after I am
6 sentenced. My cooperation will include, but will not be limited to, the following:

- 7 a. I will respond truthfully and completely to any and all questions put to me,
8 whether in interviews, before a grand jury or at any trial or other proceeding;
- 9 b. I will provide all documents and other material asked for by the Government;
- 10 c. I will testify truthfully at any grand jury, court or other proceeding as requested by
11 the Government, including in any non-criminal federal proceeding or any state
12 proceeding pursuant to paragraph 17, below;
- 13 d. Should the Government bring a forfeiture action, I will surrender any and all
14 assets acquired or obtained directly or indirectly as a result of my illegal conduct
15 as set forth above;
- 16 e. I will request continuances of my sentencing date, as necessary, until my
17 cooperation is completed;
- 18 f. I will tell the Government about any contacts I may have personally with any
19 co-defendants or subjects of investigation, or their attorneys or individuals
20 employed by their attorneys.

21 9. I agree that the Government's decision whether to file a motion pursuant to
22 U.S.S.G. § 5K1.1, as described in the Government promises section below, is based on its sole
23 and exclusive decision of whether I have provided substantial assistance and that decision will be
24 binding on me. I understand that the Government's decision whether to file such a motion, or the
25 extent of the departure recommended by any motion, will not depend on whether convictions are
26 obtained in any case. I also understand that the Court will not be bound by any recommendation
27 made by the Government.

28 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
Services, or the Government; or fail to comply with any of the other promises I have made in this
Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,

1 then the Government will be released from all of its promises, but I will not be released from my
2 guilty plea.

3 11. If I am prosecuted after failing to comply with any promises I made in this
4 Agreement, then (a) I agree that any statements I made to any law enforcement or other
5 Government agency or in Court, whether or not made pursuant to the cooperation provisions of
6 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
7 Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
8 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
9 statements, or any leads derived from those statements; and (c) I waive any defense to any
10 prosecution that it is barred by a statute of limitations, if the limitations period has run between
11 the date of this Agreement and the date I am indicted.

12 12. I agree that this Agreement contains all of the promises and agreements between
13 the Government and me, and I will not claim otherwise in the future.

14 13. I agree that this Agreement binds the U.S. Department of Justice only, and does
15 not bind any other federal, state, or local agency.

16 The Government's Promises

17 14. The Government agrees not to file or seek any additional charges against the
18 defendant that could be filed as a result of the investigation that led to the pending information.

19 15. The Government agrees not to use any statements made by the defendant pursuant
20 to this Agreement against him, unless the defendant fails to comply with any promises in this
21 Agreement. The Government may, however, provide the defendant's statements to or require the
22 defendant to submit to an interview by any federal or state agency, or require him to provide
23 testimony in any federal or state proceeding, so long as his statements may not be used against
24 him. The Government may also tell the Court and the U.S. Probation Department about the full
25 extent of the defendant's criminal activities in connection with the calculation of the Sentencing
26 Guidelines.

27 17. If, in its sole and exclusive judgment, the Government decides that the defendant
28 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities

1 within the meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it
2 will file with the Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature
3 and extent of the defendant's cooperation and recommends a downward departure.

4 18. Based on the information now known to it, the Government will not oppose a
5 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

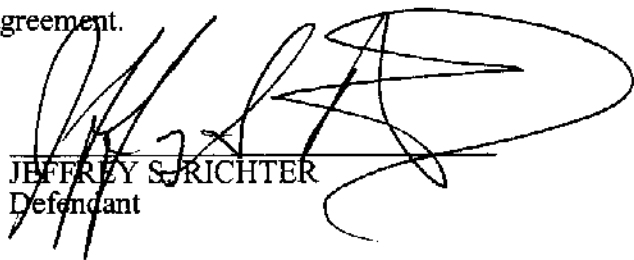
6 The Defendant's Affirmations

7 19. I confirm that I have had adequate time to discuss this case, the evidence, and this
8 Agreement with my attorney, and that he has provided me with all the legal advice that I
9 requested.

10 20. I confirm that while I considered signing this Agreement and, at the time I signed
11 it, I was not under the influence of any alcohol, drug, or medicine.


12 21. I confirm that my decision to enter a guilty plea is made knowing the charges that
13 have been brought against me, any possible defenses, and the benefits and possible detriments of
14 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
15 one coerced or threatened me to enter into this agreement.

16
17 Dated: 2/4/03


JEFFREY S. RICHTER
Defendant

19
20 KEVIN V. RYAN
United States Attorney

21
22 Dated: 2/4/03


PATRICK D. ROBBINS
MATTHEW J. JACOBS
Assistant United States Attorneys
LISA V. TENORIO-KUTZKEY
Special Assistant United States Attorney

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27 
LESLIE R. CALDWELL
Director, Enron Task Force

1 I have fully explained to my client all the rights that a criminal defendant has and all the
2 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
3 and all the rights he is giving up by pleading guilty, and, based on the information now known to
4 me, his decision to plead guilty is knowing and voluntary.

5
6 Dated:

Feb 4, 2003

Terry W. Bird
TERRY W. BIRD
Attorney for Defendant